



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5475-99

5 November 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 21 June 1994 for four years at age 18. The record reflects that you were advanced to PFC (E-2) and served for nine months without incident. However, during the six months period from March to September 1995 you received two nonjudicial punishments (NJP). Your offenses consisted of two instances of failure to go to your appointed place of duty and disobedience of an order from the commanding officer. During this period you were counseled on two occasions regarding repeated unauthorized absences (UA) and an alcohol related incident involving drunk and disorderly conduct.

You served without further incident until 14 February 1996 when you were convicted by special court-martial of a five day period of UA from 18-23 January 1996. You were sentenced to confinement at hard labor for 30 days and forfeitures of \$425 per months for two months. You were released from confinement and returned to duty on 14 February 1996.

On 27 August 1996 you received your third NJP for an 18 day period of UA. On the same day, you were notified that you were being recommended for discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct as evidenced by the three NJPs and a special court-martial conviction. You were advised of your procedural rights and waived those rights. Thereafter, the commanding officer recommended discharge under other than honorable conditions. In his recommendation, the commanding officer stated that repeated counseling had failed to produce positive results and your conduct demonstrated that you had no potential for further useful service. A staff judge advocate reviewed the proceedings and found them sufficient in law and fact. On 18 September 1996, the discharge authority directed discharge under other than honorable conditions by reason of misconduct. You were so discharged on 27 September 1996.

The Naval Discharge Review Board denied your request for recharacterization of service on 27 March 1998.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity. The Board specifically noted your contention that at the time of discharge you were under the care of a civilian psychiatrist and this fact was not taken into consideration. The medical documentation you submitted in support of your application was partially illegible and provided little information other than to show that you were being treated for depression for which medication had been prescribed, and you were scheduled for a follow-up appointment in September 1996. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of three NJPs and a special court-martial conviction. The Board noted that it was unlikely your command had any knowledge that you had sought treatment from a psychiatrist, and there is no evidence that the command was made aware of this fact. However, you provide no evidence that you were being treated for a condition that would excuse you of responsibility for the misconduct which led to your discharge. While you most probably were depressed over the fact that you were being discharged, seeking treatment for this depression did not preclude the Navy from discharging you. The Board concluded that you were guilty of too much misconduct in 27 months of service to warrant recharacterization of your discharge to honorable or under honorable conditions. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request. It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled

to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director